

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SAULT STE. MARIE TRIBE OF  
CHIPPEWA INDIANS,

Plaintiff/Counter-Defendant/Appellee/  
Cross-Appellee/Cross-Appellant,

v.

BERNARD BOUSCHOR; and MILLER,  
CANFIELD, PADDOCK AND STONE, P.L.C.,  
jointly and severally,

Defendants/Appellant/Cross-Appellants/  
Cross-Appellees,

and

DANIEL T. GREEN; PAUL W. SHAGEN; JOSEPH  
M. PACZKOWSKI; DAVID E. SCOTT; JOLENE  
M. NERTOLI; JAMES M. JANNETTA; DANIEL J.  
WEAVER, jointly and severally,

Defendants/Counter-Plaintiffs/Cross-  
Appellants/Cross-Appellees.

WILLIAM H. HORTON (P31567)  
TRISHA M. WERDER (P68207)  
Attorneys for Plaintiff/Counter-  
Defendant/Appellee/Cross-Appellant  
GIARMARCO, MULLINS & HORTON, P.C.  
Tenth Floor Columbia Center  
101 West Big Beaver Road  
Troy, Michigan 48084-5280  
☎(248) 457-7000

P. DAVID PALMIERE (P26796)  
Attorney for Defendant/Appellant/Cross-  
Appellee Bernard Bouschor  
MCCONNELL & PALMIERE, P.C.  
P. O. Box 980  
Bloomfield Hills, Michigan 48304  
☎(248) 225-9952

PLAINTIFF'S BRIEF IN OPPOSITION  
TO DEFENDANT MILLER  
CANFIELD'S MOTION TO  
SUPPLEMENT THE APPELLATE  
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WILLIAM A. SANKBEIL (P19882)  
JOANNE GEHA SWANSON (P33594)  
Attorneys for Defendant/Cross-  
Appellant/Cross-Appellee Miller Canfield  
KERR, RUSSELL AND WEBER, PLC  
Detroit Center  
500 Woodward Avenue, Suite 2500  
Detroit, Michigan 48226-3427  
☎(313) 961-0200

MARK L. DOBIAS (P35160)  
Co-Counsel for Defendants/Counter-  
Plaintiffs/Cross-Appellants/Cross-Appellees  
Daniel T. Green; Paul W. Shagen; Joseph M.  
Paczkowski; David E. Scott; Jolene M.  
Nertoli; James M. Jannetta; Daniel J.  
Weaver  
903 Ashmun Street  
Sault Ste. Marie, Michigan 49783  
☎(906) 632-8440

J. TERRANCE DILLON (P23404)  
Attorney for Defendants/Counter-Plaintiffs/  
Cross-Appellants/Cross-Appellees Daniel T.  
Green; Paul W. Shagen; Joseph M.  
Paczkowski; David E. Scott; Jolene M.  
Nertoli; James M. Jannetta; Daniel J.  
Weaver  
MYERS, NELSON, DILLON & SHIERK, PLLC  
125 Ottawa Avenue NW, Suite 270  
Grand Rapids, Michigan 49503  
☎(616) 233-9640

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## PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT MILLER CANFIELD'S MOTION TO SUPPLEMENT THE APPELLATE RECORD

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### INTRODUCTION

Defendant Miller Canfield's motion to supplement the appellate record with a video of a Tribal Board debate regarding Resolution 2004-71 should be denied. There is no good cause to supplement the record with the debate since the language of the Resolution is unambiguous, floor debate is inadmissible, and the Resolution was a subsequent remedial measure.

### THE RESOLUTION IS UNAMBIGUOUS AND FLOOR DEBATE MAY NOT BE CONSIDERED

The rules of statutory construction are well-established. A statute must be construed according to the plain and ordinary meaning of the words and the court may not look behind the

words of the statute. E.g., MacQueen v Port Huron, 194 Mich 328, 342 (1916); Transport Ins Co v Home Ins Co, 134 Mich App 645, 651 (1984).

The plain meaning of Resolution 2004-71 is unambiguous. It “vacate[s] and replace[s] Resolution 2001-07” and requires seven votes of the Tribal Board to hire a Key Employee and eight to terminate one. A Key Employee is defined as one of only a handful of positions. Exhibit A. This Resolution sheds no light on whether the Tribal Board believed Defendant Bouschor had authority to do what he did in this case.

In addition, “statements by individual members of the legislature about the meaning of provisions of a bill are generally held not to be admissible as aids in construing the statute.” Hayden v Pataki, 449 F3d 305, 354 (2<sup>nd</sup> Cir 2006). “Floor statements are among the most dangerous and least reliable forms of legislative history.” Id. at 353. Accord: Regan v Wald, 468 US 222, 237 (1984) (improper to consider floor debate); Zuber v Allen, 396 US 168, 186 (1969) (“Floor debates at best express the understanding of individual Congressmen.”).

In order to be considered in a motion for summary disposition, evidence must “be admissible as evidence.” MCR 2.116(G)(6). Since the Tribal Resolution is unambiguous and floor debate is inadmissible, the comments of various Tribal Board members may not be considered.<sup>1</sup>

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<sup>1</sup>An additional reason why floor debate is inadmissible is because any litigant can find some comment to support their position. For example, in this case, Defendant Miller Canfield ignores those floor statements that express that while the Tribal Board, not the Chairman, already had employment decision authority, it was necessary to clarify that position:

The notion that people need to be fearful of their job will be corrected by this and also that they report to the Board of Directors. In the past, the problem has been that that hasn't been clear, that the Board of Directors in the Constitution is the authority

RESOLUTION 2004-71 IS AN INADMISSIBLE  
SUBSEQUENT REMEDIAL MEASURE

Defendant Miller Canfield's motion to supplement the record is also inadmissible because Resolution 2004-71 is a subsequent remedial measure. As such it is inadmissible under MRE 407.

Evidence is inadmissible when, after the event, measures are taken to prevent a future occurrence:

When, after an event, measures are taken which, if taken previously would have made the event less likely to occur, evidence of the subsequent measures is not admissible...

MRE 407.

While the Tribe believed that the motion passed on August 20, 2002 which "revoke[d] the Chairman's authority on employment contracts" and that "all future employee contracts must be approved by the Board of Directors," Exhibit B, was sufficient to do what it said -- revoke the Chairman's authority -- it obviously did not stop the events in this case. As a result, the Tribe passed a new Resolution which completely revoked the entire former Resolution and replaced it with specific language requiring Board authorization. This is the essence of a subsequent remedial measure and is inadmissible. E.g., Jerrigan v General Motors Corp, 180 Mich App 575, 583-584 (1989). Since inadmissible evidence may not be considered in a summary disposition motion, MCR 2.116(G)(6), Defendant Miller Canfield's motion should be denied.

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of the Tribe.

Miller Canfield Motion to Supplement at Exhibit A, July 6, 2004 Board Meeting, Statement of Aaron Payment (emphasis added).

CONCLUSION

There is no good cause to supplement the record because the floor debate regarding Resolution 2004-71 is inadmissible. Defendant Miller Canfield's motion should be denied.

GIARMARCO, MULLINS & HORTON, P.C.

By: 

WILLIAM H. HORTON (P31567)

TRISHA M. WERDER (P68207)

Attorneys for Plaintiff/Counter-Defendant/  
Appellee/Cross-Appellant

Tenth Floor Columbia Center

101 West Big Beaver Road

Troy, Michigan 48084-5280

☎(248) 457-7000

Dated: September 5, 2007

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RESOLUTION NO: 2004-71  
APPROVAL OF KEY EMPLOYEES

WHEREAS, the Tribe finds it necessary to employ individuals whose services are deemed to be particularly valuable to the Tribe. And further, that these individuals are of particular value are known as "Key Employees" and Key Employee is herein defined as: for the government of the Tribe: the Executive Director, Deputy Executive Director, Chief Financial Officer, Division Directors, Internal Services Directors, Executive Assistant to the B.O.D., Executive Director of the Gaming Commission, Chief of Law Enforcement, and Chief Judge; and for the Kewadin Casinos: the Chief Financial Officer, Vice Presidents, Food and Beverage Director, Retail and Support Services Director, and General Managers; and

WHEREAS, such Key Employees will be interviewed by, and selected by, the hiring committee system currently operating under the authority of the Board of Directors; and

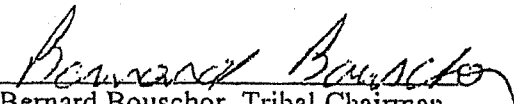
WHEREAS, upon selection of an individual for employment as a Key Employee by the hiring panel, such selection shall be brought before the Board of Directors for approval as indicated below; and

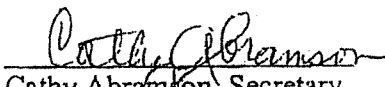
NOW, THEREFORE, BE IT RESOLVED, the Board of Directors establishes this resolution to vacate and replace Resolution 2001-07 Approval and Authorization of Employment Agreements.

BE IT FURTHER RESOLVED, that the Board of Directors adopts the following for the hiring of, and termination of, Key Employees: (a) it shall take an affirmative vote of seven Board of Directors members to hire a Key Employee; and (b) it shall take an affirmative vote of eight Board of Directors members to terminate a Key Employee.

CERTIFICATION

We, the undersigned, as Chairman and Secretary of the Sault Ste. Marie Tribe of Chippewa Indians, hereby certify that the Board of Directors is composed of 13 members, of whom 13 members constituting a quorum were present at a meeting thereof duly called, noticed, convened, and held on the 6 day of July 2004; that the foregoing resolution was duly adopted at said meeting by an affirmative vote of 12 members for, 0 members against, 0 members abstaining, and that said resolution has not been rescinded or amended in any way.

  
Bernard Bouschor, Tribal Chairman  
Sault Ste. Marie Tribe of  
Chippewa Indians

  
Cathy Abramson, Secretary  
Sault Ste. Marie Tribe of  
Chippewa Indians

ST 00527





**BOARD OF DIRECTORS REGULAR MEETING  
COMFORT INN  
MUNISING, MICHIGAN  
MINUTES  
AUGUST 20, 2002**

The meeting was opened at 6:04 p.m. by vice -Chairman Payment.

Present: Martha Miller, Denise Chase, Vic Matson, Bob LaPoint, Aaron Payment, Cathy Abramson, Cliff Bellant, Fred Paquin, Dennis McKelvie, Mike Menard, Robert Lambert, and Mike Lumsden.

Absent: Bernard Bouschor-business.

Moved by Director Paquin, supported by Director Matson, to excuse Chairman Bouschor from the meeting.

Motion carried unanimously.

Moved by Director Matson, supported by Director Paquin, to approve Resolution 2002-78, United States Department of Agriculture Community Development Loan.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Sault Ste. Marie Tribe of Chippewa Indians hereby authorizes Bernard Bouschor, Tribal Chairman, or his designee, to apply for a low interest loan in the amount of \$2,400,000.00.

Motion carried unanimously.

Moved by Director Paquin, supported by Director Abramson, to accept the recommendation of the Conservation Committee and approve a helper's card to Allan McKerchie, in order to work with Ralph Wilcox.

Motion carried unanimously.

Matters Raised by the Membership/Board:

Jeff Holt: Communication Survey  
Denise Chase: Manistique PowWow.

Moved by Director Lumsden, supported by Director Chase, to approve a \$1500.00 donation to the Manistique PowWow, which will be the 1<sup>st</sup> weekend in September.

Motion carried unanimously.

Minutes  
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Mike Lumsden: Employment Contracts.

Moved by Director Lumsden, supported by Director McKelvie, to revoke the Chairman's authority on employment contracts and all future employee contracts must be approved by the Board of Directors. Also, requesting a detailed report regarding all employment contracts with 14 days.

Roll Call Vote: Motion carried with Directors Paquin and Matson opposing.

Dennis McKelvie: Embezzlement.

Fred Paquin: Land in St. Ignace.

Denise Chase: Update on gas station/tanks in outlying areas.

Cathy Abramson: Requested a written report from Mike Lumsden regarding governmental services, Enrollment update, Gem Island Cemetery.

Moved by Director Abramson, supported by Director McKelvie, to request a monthly written report from Mike Lumsden as Executive Director regarding governmental services.

Motion carried with Director Matson opposing and Director Lumsden abstaining.

Mike Lumsden: Hiring procedures.

Aaron Payment: Donation.

Noel Rousseau: Tuition waiver.

Michelle Kruopa-Kulik: Preventative care.

Moved by Director Lumsden, supported by Director McKelvie, to adjourn the meeting.

Motion carried unanimously.

Meeting adjourned: 7:25 p.m.

Date: 9-3-02 Secretary: Cathy Abramson

Others Present: Kirk Bartling, Brenda K., Bill McKenney.

Acct: Jake Sillers

ACFS:

Casino:

Community Services: Susan McCoy

EDC: Marta Diaz

Education:

Gaming:

Health: Michelle Kroupa Kulik

Housing: Russ McKerchie

HR:

Law Enf.: Officer

Legal:

Newspaper: Rick Smith

Tribal Court: